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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 64

O. C. TOMKINS, PETITIONER,

v.s.

THE STATE OF MISSOURI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MISSOURI

PETITION FOR CERTIORARI FILED APRIL 24, 1944.

CERTIORARI GRANTED JUNE 12, 1944.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 64

O. C. TOMKINS, PETITIONER,

vs.

THE STATE OF MISSOURI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MISSOURI

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[fol. 1] **IN THE SUPREME COURT OF MISSOURI**

Case No. 39051

Ex Parte O. C. TOMKINS, Petitioner,

vs.

**PAUL E. KAISER, Warden, Missouri State Penitentiary,
Respondent**

MOTION FOR LEAVE TO SUE IN FORMA PAUPERIS

Comes now the petitioner and states to the Court that he believes there is a just and a sufficient cause of action against the above named respondent, and that the proper remedy is by habeas corpus.

The petitioner further states to the Court that he is a pauper, without funds, property or income, therefore he cannot pay the costs and expenses of commencing and maintaining an action in habeas corpus in this Court, or, employ competent counsel in his behalf.

Wherefore, petitioner prays the Court for leave to sue in forma pauperis in this Court upon his petition for a Writ of habeas corpus hereunto attached, and further, petitioner prays the Court for the appointment of competent *of* counsel in his behalf.

This motion is presented in good faith and not merely for vexation.

O. C. Tomkins, Petitioner.

This affiant makes oath and says that the facts stated in the above motion are true according to his best knowledge and belief.

O. C. Tomkins, Affiant.

Subscribed and sworn to before me, a Notary Public within and for the County and State aforesaid, at my office in Jefferson City, Missouri, this 15 day of March, A. D. 1944. — — —, Notary Public. My commission expires — — —.

[fol. 2] In the SUPREME COURT OF Missouri

[Title omitted]

PETITION FOR A WRIT OF HABEAS CORPUS

Comes now the petitioner, O. C. Tomkins, and respectfully states to the Court that he is being illegally and unlawfully deprived of his liberty by the Respondent, Paul E. Kaiser, Warden of the Missouri State Penitentiary, located in Cole County, Missouri, and the said petitioner is being detained by the said respondent in the said State Penitentiary as prisoner number 44577, under and by virtue of a judgment and sentence of the Circuit Court of Pemiscot County, Missouri, made and entered of record by said Court on March 19th, 1934, and imposing a sentence of imprisonment for Life upon the petitioner upon his plea of guilty to a charge of Murder in the First Degree. The petitioner states that in the proceedings in said Circuit Court of Pemiscot County, Missouri, he was not represented by counsel, the Court did not make an effective appointment of counsel, petitioner did not waive his constitutional right to the aid of counsel, and he was ignorant of his right to demand counsel in his behalf, and he was incapable adequately of making his own defense. Attached hereto and made a part hereof is a true and correct copy of the judgment and sentence in said cause.

[fol. 3] Your petitioner says that his imprisonment is illegal and unlawful and in violation of his rights under the 14th Amendment to the Constitution of the United States, in the following particulars, to-wit:

1. "Because the petitioner was denied the aid of counsel by the Circuit Court of Pemiscot County, and the judgment and sentence of said court, imposed upon the petitioner, is thereby vitiated, since under the "due process clause" of the 14th Amendment to the Constitution of the United States, it was the duty of the trial court, to-wit, the Circuit Court of Pemiscot County, Missouri, Whether Requested or Not, to assign counsel for the petitioner As a Necessary Requisite of Due Process of Law, since the petitioner was charged in said court with a Capital Offense, to-wit, Murder in the First Degree, and it follows that the failure of the trial court to make an effective appointment of counsel Is a Denial of Due Process of Law and the Judgment of Said Court Is Void."

2. "Because the petitioner was not represented by counsel, he was incapable adequately of making his own defense, and he did not waive his constitutional right to counsel, and the court denied him counsel, it follows that the judgment of conviction pronounced by the Circuit Court of Pemiscot County, Missouri, Is Void, since the jurisdiction of said Court was lost when it denied petitioner due process of law in refusing him the aid of counsel."

The petitioner states that the requirement of conforming to fundamental standards of procedure in criminal trials Was Made Operative Against the States by the 14th Amendment to the Constitution of the United States, and is therefore applicable in this case. Moreover, "The State Courts are as much bound as the Federal Courts to see that no man is punished in violation of the Constitution or laws of the United States".

[fol. 4] The petitioner states that no application for the relief sought has been made to or refused by any Court, officer or officers superior to the one to whom this petition is presented.

Wherefore, the petitioner prays that a Writ of habeas corpus may be issued that he may be discharged from said unlawful imprisonment and/or for such other and further relief as the Court may deem meet and proper in the premises.

O. C. Tomkins, Petitioner.

This affiant makes oath and says that the facts stated in the foregoing petition are true according to his best knowledge and belief.

O. C. Tomkins, Affiant.

[fol. 5] EXHIBIT TO PETITION

CERTIFIED COPY OF SENTENCE & JUDGMENT OF COURT (R. S.
1919, Secs. 4060, 4061)

In the Circuit Court, March Term, 1934

STATE OF MISSOURI,

County of Pemiscot, ss:

Be It Remembered, That heretofore, to-wit, on the Nineteenth day of March, A. D. 1934, at the regular March Term of the Pemiscot County Circuit Court, begun and

held at the Court House in the City of Caruthersville, in the County and State aforesaid, before the Honorable John E. Duncan, Judge of the 38th Judicial Circuit of the State of Missouri and Judge of this Court, the following among other proceedings were had, to-wit:

No. 3528

THE STATE OF MISSOURI, Plaintiff,

vs.

O. C. TOMKINS, Defendant

Criminal Action

SENTENCE & JUDGMENT

Now, at this day comes R. W. Hawkins, Prosecuting Attorney for the State, and also comes the Defendant herein, in person, in the custody of the Sheriff of this County, and in presence of —— Attorney and Counsel in open court, whereupon the said defendant is informed by the Court that by his own confession he is guilty of Murder in the First Degree as charged in the information, and his punishment fixed at imprisonment in the State Penitentiary for the period of his natural life, and being now asked by the Court if he had any legal cause to show why Judgment should not be pronounced against him according to law, and still failing to show such cause it is therefore sentenced, ordered and adjudged by the Court that the said defendant, O. C. Tomkins, having plead guilty as aforesaid, be confined in the Penitentiary of the State of Missouri, for the period of his natural Life from the 19th day of March, 1934, and that the Sheriff of this County shall, without delay, remove and safely convey the said defendant to the said Penitentiary there to be kept, confined and treated in the manner directed by law, and the Warden of said Penitentiary is required to receive and safely keep him the said Defendant, in the Penitentiary aforesaid, until the Judgment and Sentence of the Court herein be complied with, or until the said defendant shall be otherwise discharged by due course of law.

It is further considered, ordered and adjudged by the Court, that the State have and recover of said defendant

the costs in this suit expended and that hereof execution issue thereof.

STATE OF MISSOURI,

County of Pemiscot, ss:

I, Ernest A. Long, Clerk of the Circuit Court in and for said County, hereby certify that the above is a true copy of the original Judgment and Sentence of the Court in the cause herein named, as the same appears of record in my office.

Witness my hand as Clerk, and the seal of said Court. Done at office in Caruthersville, Mo., this 24th day of May, 1943.

Ernest A. Long, Clerk, by L. L. Green, Deputy.
(Seal.)

[fol. 6] IN THE SUPREME COURT OF MISSOURI

[Title omitted]

PETITIONER'S MEMORANDUM BRIEF

The petitioner is detained by the Respondent in the Missouri State Penitentiary, under a judgment of the Circuit Court of Pemiscot County Missouri. Said judgment was made and entered of record March 19, 1934, and imposes a sentence of Life upon the petitioner for Murder in the First Degree, a Capital Offense under the laws of Missouri.

The petitioner asserts that at no time prior to his conviction was he allowed to consult with an attorney. Petitioner further asserts that at and in the proceedings in the said Circuit Court of Pemiscot County, he was not represented by counsel, he did not waive his right to counsel, and the trial court failed to appoint counsel, consequently, his conviction and sentence are void for want of due process of law, as required by the 14th Amendment to the Constitution of the United States.

Petitioner asserts that "it was the duty of the trial court, Whether Requested or not, to appoint counsel for him as A Necessary Requisite of Due Process of Law. It was so ruled by the Supreme Court of the United States in the case of Powell vs. Alabama, 287 U. S. 45, 70.

In the Powell case, *supra*, the Court further said:

"At least in capital cases where the defendant is unable to employ counsel and is incapable adequately of making his own defense . . . It Is the Duty of the Court, Whether Requested or Not, to Assign Counsel for Him as a Necessary Requisite of Due Process of Law. The Necessity of Counsel Is So Vital and Imperative that the Failure of a Trial Court to Make an Effective Appointment of Counsel Is a Denial of Due Process of Law."

It is well established that "with us it is a universal principle of constitutional law that a prisoner shall be allowed a defense by counsel". 1 Cooley's Const. Lim. 8th Ed. 700, quoted with approval in *Powell vs. Alabama*, *supra*.

The due process provision of the 14th amendment was intended to guarantee procedural standards adequate and appropriate to protect at all times people charged with crime by those holding positions of power and authority. USCA, Amend. 14. *Chambers vs. State of Florida*, 60 S. Ct. 472.

The forfeiture of lives, liberties or property of the people accused of crime can only follow if procedural safeguards of due process of law have been obeyed. *Chambers vs. State of Florida*, *supra*.

[fol. 7] The requirement of conforming to fundamental standards of procedure in criminal trials was made operative against the states by the 14th Amendment. *Chambers v. State of Florida*, *supra*.

The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution.

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper

charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue.

In the case of *Johnson v. Zerbst*, 58 S. Ct. 1019, the Court said:

"One convicted and sentenced without assistance of counsel * * * is entitled to relief by habeas corpus. If the accused is not represented by counsel and has not competently and intelligently waived his constitutional right, the jurisdiction of the court is lost, the judgment of conviction pronounced by the court is void, and release from imprisonment may be obtained by habeas corpus."

In the case of *Davis vs. Burke*, 21 S. Ct. 210, 45 L. Ed. 249, the Court said:

"The State Courts are as much bound as the Federal Courts to see that no man is punished in violation of the Constitution or laws of the United States."

In consideration of the foregoing, the petitioner submits that his imprisonment in the Missouri State Penitentiary is illegal and unlawful and he is entitled to relief by habeas corpus.

It is the prayer of the petitioner that the Court will so find and so order.

Respectfully submitted, O. C. Tomkins, Petitioner.

[fol. 8] © IN THE SUPREME COURT OF MISSOURI

[Title omitted]

MOTION FOR RE-HEARING.

Comes now the petitioner, O. C. Tomkins, and moves that the Court grant him a re-hearing in this cause for the reasons following:

1. The judgment and decision of this Court rendered against this petitioner on or about April 3, 1944, is against the law and evidence and is prejudicial to the Constitutional rights of the petitioner, as defined by the 14th Amendment to the Constitution of the United States of America.

2. The judgment and decision of this Court rendered against this petitioner on or about April 3, 1944, is erroneous and for the wrong party, and operates as a denial of the equal protection of the law, and deprives the petitioner of his liberty without due process of law, contrary to the 14th Amendment to the Constitution of the United States of America.

3. The petitioner's application for the writ of habeas corpus meets all the legal requirements and states facts which, if true, entitles the petitioner to relief by habeas corpus and entitles him to — discharged from the custody of the respondent.

4. The conviction and sentence rendered against the petitioner by the Circuit Court of Pemiscot County, Missouri, on March 19th, 1934, were void for want of the essential elements of due process, and the proceeding thus vitiated may be challenged in any appropriate manner, and since said conviction and sentence was challenged in the original petition of the petitioner in this Court by the express invocation of the Fourteenth Amendment to the Constitution of the United States, and since said Court entertained the challenge, considered the federal question thus presented, but declined to enforce petitioner's constitutional right, it follows that this Court has denied a federal right fully established and specially set up and claimed, and by such action this Court will deny the petitioner the equal protection of the law.

Wherefore, the petitioner moves that this Court grant him a re-hearing in this cause.

This motion is presented in good faith and not merely for vexation.

Respectfully submitted, O. C. Tomkins, Petitioner.

[fol. 9] LETTER FROM CLERK ADVISING OF DENIAL OF THE
FILING OF MOTION FOR REHEARING

Clerk of the Supreme Court, State of Missouri

Jefferson City, Missouri

Marion Speer, Clerk.

April 17, 1944.

Mr. O. C. Tomkins,
P. O. Box 900,
Jefferson City,
Mo.

In re: Tomkins vs. Kaiser, etc.,

No. 39051

DEAR SIR:

I am returning herewith the motion for rehearing in the above-entitled case, as the Court has denied the filing thereof.

Very truly yours, Marion Speer, Clerk.

[fol. 10] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1944

No. 64

[Title omitted]

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS—
May 29, 1944

On consideration of the motion for leave to proceed herein *in forma pauperis*,

It is ordered by this Court that the said motion be, and the same is hereby granted.

[fol. 11] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1944

No. 64

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed June 12, 1944

The order of May 29, 1944, denying certiorari in this case is vacated and the petition for writ of certiorari herein to the Supreme Court of the State of Missouri is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 1037, Williams vs. Kaiser, Warden.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: In forma pauperis. Enter petitioner pro se. File No. 48,415, Missouri, Supreme Court, Term No. 64. O. C. Tomkins, Petitioner, vs. The State of Missouri. Petition for a writ of certiorari and exhibit thereto. Filed April 24, 1944. Term No. 64 O. T. 1944.

(2765)

[fol. 11] IN THE SUPREME COURT OF MISSOURI, SEPTEMBER
TERM, 1943

39051

O. C. TOMKINS, Petitioner,
vs. Habeas Corpus

PAUL E. KAISER, warden of the Missouri State Penitentiary,
Respondent

Now at this day the court having seen and fully considered petitioner's motion for leave to file a petition for a writ of habeas corpus as a poor person, doth order that said motion be, and the same is hereby sustained.

And now on consideration of the petition for a writ of habeas corpus herein the court doth order that said petition be, and the same is hereby denied for the reason said petition fails to state a cause of action.

STATE OF MISSOURI—Set.

I, Marion Spicer, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Term thereof, 1943, and on the 3rd day of April, 1944, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 20th day of October, 1944.

Marion Spicer, Clerk, Seal.

(4732)